

# The Reporting Law

The first child abuse reporting law in California was enacted in 1963. The early laws mandated only physicians to report physical abuse. Over the years, numerous amendments have expanded the definition of child abuse and the persons required to report. Procedures for reporting categories of child abuse have also been clarified.

In California, certain professionals are required to report known or suspected child abuse. Other citizens, not required by law to report, **may** also do so.

It is important for practitioners and other mandated reporters to keep updated on periodic amendments in the law. Your local Child Abuse Prevention Council or Child Protective Agency (see Resources) has current reporting law information.

## 1. Why Must You Report?

The primary intent of the reporting law is to **protect the child**. Protecting the identified child may also provide the opportunity to protect other children in the home. It is equally important to **provide help for the suspected abuser**. The report of abuse may be a catalyst for bringing about change in the home environment, which in turn may lower the risk of abuse.

## 2. What is Child Abuse?

The Penal Code (P.C.) defines child abuse as: "a physical injury inflicted by other than accidental means on a child by another person." It also includes emotional abuse,

sexual abuse, neglect, or abuse in out-of-home care. Child abuse does not include a "mutual affray between minors," "reasonable and necessary force used by a peace officer" under specified circumstances, or spanking that is reasonable and age appropriate and does not expose the child to risk of serious injury. (P.C. 11165.6, Welfare and Institutions Code (W&IC) Section 300.)

## 2. What to Report

The California Child Abuse Reporting Law is found in Penal Code Sections 11165-11174.3. The following is only a partial description of the statute. Mandated reporters should become familiar with the detailed requirements as they are set forth in the Penal Code (P.C.).

Under the law, when the victim is a child (a person under the age of 18) and the perpetrator is any person (including a child), the following types of abuse must be reported by all legally mandated reporters:

- a. A **physical injury** inflicted by other than accidental means on a child. (P.C. 11165.6).
- b. **Child sexual abuse** which includes sexual assault and sexual exploitation. Sexual assault includes sex acts with children, intentional masturbation in the presence of children and child molestation. Sexual exploitation includes preparing, selling or distributing pornographic materials involving children, performances involving obscene sexual conduct and child prostitution. (P.C. 11165.1).

- c. **Willful cruelty or unjustified punishment**, which includes inflicting or permitting unjustifiable physical pain or mental suffering, or the endangerment of the child's person or health. (P.C. 11165.3). "Mental suffering" in and of itself is not required to be reported.

However, it **may** be reported.

Penal Code 11166.05 states:

"Any mandated reporter who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9". (The specified agencies include any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department.)

- d. **Unlawful corporal punishment or injury**, willfully inflicted, resulting in a traumatic condition. (P.C. 11165.4).
- e. **Neglect** of a child, whether "severe" or "general," must also be reported if the perpetrator is a person responsible for the child's welfare. It includes acts or omissions harming or threatening to harm the child's health or welfare. (P.C. 11165.2).
- f. Any of the above types of abuse or neglect occurring in out-of-home care (P.C. 11165.5). (For a discussion of newborns with a positive toxicology screen, or for information on child abuse in

relation to domestic violence, see the "Questions Often Asked" section.)

#### 4. Who Reports?

Legally mandated reporters include a wide variety of positions, which are as follows:

- a. **Mandated reporters in public positions** include: a teacher; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility, a headstart teacher; a licensing worker or licensing evaluator; a public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole

officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section; a firefighter, except for voluntary firefighters. (P.C. 11165.7)

- b. **Health care personnel who are mandated reporters** include:
- a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family, and child counselor, licensed clinical social worker or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code; a marriage, family and child counselor trainee, as defined in subdivision (c) of

Section 4980.03 of the Business and Professions Code; and unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, a state or county public health employee who treats a minor for venereal disease or any other condition, a coroner, or a medical examiner, or any other person who performs autopsies (P.C. 11165.7).

- c. **Mandated reporters in public protection positions** include any employee of any police department, sheriff's department, county probation department, or county welfare department. (P.C. 11165.7(a)(33)).
- d. **Mandated reporters in public contact positions** include:
- commercial film and photographic print processors, clergy, employees or volunteers of a Court Appointed Special Advocate program, child visitation monitors, animal control officers or humane society officers.
  - **Commercial film and photographic print processor** is any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency. (P.C. 11165.7(a) (29)). Commercial film and photographic print processors must report depictions of a child

under age 16 in an act of sexual conduct (P.C. 11166 (d)).

- **Clergy members** means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized religious denomination or organization. (P.C. 11166 (c)).
- **Any custodian of records of a clergy member** (specified in P.C. 11165.7(33) and 11166 (3) (A)). "On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph."

Also, unlike other mandated reporters the custodian of records for clergy, Section 11166 (3)(B) states: "This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority

by the time the required report is made" (i.e. the child is now an adult).

- **A child visitation monitor** includes any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law. (P.C. 11165.7(a) (30)).
- **An employee or volunteer of a Court Appointed Special Advocate program**, as defined in Rule 1424 of the Rules of Court. (P.C. 11165.7 (a) (34)).
- **Animal control officer** means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations. (P.C. 11165.7(a) (31)(A)).
- **Humane society officer** means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code (P.C. 11165.7(a) (31)(B)).

## 5. When Do You Report?

Child abuse must be reported when one who is a legally mandated reporter "...has knowledge of or observes a child in his or her professional capacity, or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse or neglect..." (P.C. 11166(a)).

"Reasonable suspicion" occurs when "it is objectively reasonable for a person to entertain such a suspicion,

based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." (P.C. 11166(a)(1)). Although wordy, the intent of this definition is clear: if you suspect, report.

You must make a report immediately (or as soon as practically possible) by phone. A written report must be forwarded within 36 hours of receiving the information regarding the incident. (P.C. 11166(a)). Written reports **must** be submitted on Department of Justice forms, which can be requested from your local (police or sheriff's department, (not including a school district police or security department) or a county welfare department). (P.C. 11168). See Appendix A.

#### **6. To Whom Do You Report?**

The report must be made to a county welfare department or probation department (if designated by the county to receive mandated reports) or a police or sheriff's department, not including a school district police or security department. (P.C. 11165.9)

Reports by commercial print and photographic print processors, are to be made to the law enforcement agency having jurisdiction immediately or as soon as practically possible. (P.C. 11166(d)).

#### **7. Joint Knowledge – Who Reports?**

When two or more persons who are required to report, have joint knowledge of a known or suspected instance of child abuse or neglect, and there is agreement among them, the telephone report may be made by the selected team member. A single written report may then be made and signed by the reporting team member. Where there is a failure by the designated team member to make the report, any team member who knows shall then be responsible to make the child abuse report. (P.C. 11166 (f)).

#### **8. Immunity**

Those persons legally mandated to report suspected child abuse have immunity from criminal or civil liability for reporting as required or authorized by the child abuse and neglect reporting law. (P.C. 11172(a)).

#### **9. Safeguards for Mandated Reporters**

No supervisor or administrator may impede or inhibit a report or subject the reporting person to any sanction. (P.C. 11166(g)).

Persons other than those legally mandated to report are not required to include their names when making a report. (P.C. 11167 (e)).

Reports are confidential and may be disclosed only to specified persons and agencies (P.C.11167.5).

**10. Liabilities for Failure to Make A Required Report.**

A person who fails to make a required report is guilty of a misdemeanor punishable by up to six months in jail and/or up to a \$1000 fine, or both. (P.C. 11166(b)). He or she may also be found civilly liable for damages, especially if the child-victim or another child is further victimized because of the failure to report. (Landeros vs. Flood (1976) 17C.3d 399).

**11. Responsibilities of Agency Employing Mandated Reporter**

Any person entering employment which makes him/her a mandated reporter must sign a statement, provided and retained by the employer, to the effect that he or she has knowledge of the reporting law and will comply with its provisions (P.C. 11166.5(a)). See Appendix B for sample of form.

Commercial film and photographic print processors and persons employed by child protective agencies as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties are not required to sign such statements. (P.C. 11166.5(a)).

**12. Licensing Requirement**

The state agency issuing a license to a person who is required to report child abuse must either send a statement to the licensee which cites reporting requirements and the penalty for failure to report or print the information on all application forms for a license or certificate printed on or after January 1, 1986. (P.C.11166.5(b)(c)).

**13. Feedback to Reporter**

After the investigation is completed or the matter reaches a final disposition, the investigating agency shall inform the mandated reporter of the results of the investigation and any action the agency is taking. (P.C. 11170(b)(2)).